

EXHIBITS

Exhibit A: Sentencing Transcript

Exhibit B: Record of Felony Convictions

Exhibit C: PSR showing incorrect felony record of Aggravated Robbery, when actual Court records will clearly indicate it was a Simple Robbery felony conviction.

Exhibit D: Partial list of remanded, reversed or vacated cases.

Exhibit E: Sentencing Guidelines



EXHIBIT 'A'

Sentencing Transcript

The following nine (9) pages are the pertinent pages from the sentencing transcript of Petitioner Theodore S. Varner, in which he clearly is convicted of, and sentenced for Minnesota SIMPLE ROBBERY.

Theodore Stevie Varner - File No. 4675113

1 The matter now is charged with a count of
2 Aggravated Robbery and a count of Simple Robbery. The
3 count of Aggravated Robbery will be dismissed and Mr.
4 Varner will enter a plea to the Simple Robbery.

5 And that is the only plea agreement, except the
6 court has indicated to me that it is a presumptive sentence
7 of 18 months and that there will be a presentence report,
8 and if Mr. Varner does not, there is nothing in there that
9 would cause the court to require the court to change its
10 mind then the sentence would be stayed.

11 THE COURT: Okay. Is that your understanding, Mr.
12 Robinson?

13 MR. ROBINSON: It is, Your Honor.

14 THE COURT: Mr. Varner, have you had enough time to
15 discuss this matter with your attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you talked to him about the facts of
18 the case?

19 THE DEFENDANT: Yes.

20 THE COURT: And have you talked to him about your legal
21 rights?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. And you understand that the plea
24 agreement is that if you plead guilty to Simple Robbery the
25 other charge of Aggravated Robbery, which is a required

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1 prison sentence, would be dismissed?

2 THE DEFENDANT: So I'm charged with two counts of
3 robbery?

4 THE COURT: No. You're charged with Aggravated
5 Robbery, one count, right now; one count of Aggravated
6 Robbery, as I understand it. True?

7 MR. ROBINSON: Yes.

8 THE COURT: All right. And if you agree to plead
9 guilty to Simple Robbery, which does not carry a
10 presumptive prison sentence, which means you can still get
11 jail time, not prison, if you plead guilty to Simple
12 Robbery, the Aggravated Robbery will be dismissed, the
13 original charge would be dismissed?

14 THE DEFENDANT: All right. I will plead guilty.

15 THE COURT: Do you understand that, though?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay.

18 MR. ROBINSON: Your Honor, I think you may have made a
19 misstatement. The original charge was Simple Robbery, so
20 we would be going back to the original charge of Simply
21 Robbery and dismissing the amended complaint.

22 THE COURT: All right. All right. That's what we're
23 talking about.

24 THE DEFENDANT: I don't understand that.

25 THE COURT: Okay. Well, --

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1 MR. KLAS: Well, you remember, Mr. Varner, we talked
2 about that you were charged with Simple Robbery?

3 THE DEFENDANT: Right.

4 MR. KLAS: And the county attorney then, after some
5 negotiations, came into court and amended that to
6 Aggravated Robbery.

7 Now, the county attorney is saying that if you
8 plead guilty it will dismiss the charge of Aggravated
9 Robbery, if you plead guilty to Simple Robbery. So now are
10 standing before the --

11 THE DEFENDANT: Oh, yeah. I understand.

12 MR. KLAS: You're going to plead guilty to Simple
13 Robbery?

14 THE DEFENDANT: To Simple Robbery.

15 THE COURT: All right. So you understand that
16 agreement now?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Other than that agreement, has anyone
19 promised you anything or threatened you in any way to get
20 you to plead guilty?

21 THE DEFENDANT: They said I might not be having to go
22 to jail.

23 THE COURT: Okay. Well, who said that you might not
24 have to go to jail?

25 THE DEFENDANT: My attorney.

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1 Varner, and I would certainly advise you to take it.
2 You're the one that has to make the decision. But I would
3 certainly advise you to take this offer.

4 THE DEFENDANT: Yes, sir. I plead guilty to Simple
5 Robbery.

6 THE COURT: Okay. Well, let me go through this
7 information then.

8 All right. Let's rearraign Mr. Varner on the
9 Simple Robbery charge.

10 Will you waive the reading of the complaint, Mr.
11 Klas?

12 MR. KLAS: Yes, Your Honor, we waive a reading.

13 THE CLERK: Please state your full name.

14 THE DEFENDANT: My name is Theodore Stevie Varner.

15 THE CLERK: And spell your last name.

16 THE DEFENDANT: V-a-r-n-e-r.

17 THE CLERK: What is your date of birth?

18 THE DEFENDANT: 5/13/68.

19 THE CLERK: What say you, Theodore Stevie Varner, to
20 the complaint charging you with Simple Robbery; guilty or
21 not guilty?

22 THE DEFENDANT: Guilty of Simple Robbery.

23 THE COURT: Now, Mr. Varner, please step over here to
24 the witness stand and remain standing for a moment when you
25 get over there.

Theodore Stevie Varner - File No. 4675113

1 Q Your attorney, Mr. Klas, is present in court with you
2 today, is that correct?

3 A Yes.

4 Q And have you discussed this case with him before coming to
5 court today?

6 A I talked to him briefly.

7 Q Do you feel that you fully understand what's going on in
8 this case and that you have read the attachments to the
9 complaint and you discussed the case with him before coming
10 to court?

11 A Yes.

12 Q You're pleading guilty today to the offense of Simple
13 Robbery. Do you understand what that crime means?

14 A In a sense.

15 Q Well, you read the complaint. And did you understand what
16 was contained on the complaint?

17 A Yes, I did.

18 Q You understand that by law the maximum sentence which may
19 be imposed upon you is a period of ten years. However, the
20 judge has made some comments earlier about what his
21 inclination is in terms of sentencing.

22 But you understand the maximum sentence is ten
23 years, is that correct?

24 A Yes. But that's with prior convictions, though, right?

25 MR. KLAS: Maybe you should explain the sentencing

Theodore Stevie Varner - File No. 4675113

1 Q Well, --

2 A No.

3 Q All right. Are you pleading guilty of your own free will?

4 A Yes, I am.

5 Q And because you believe that you are guilty of this
6 offense?

7 A Yes, I do.

8 Q Thank you.

9 MR. ROBINSON: I have nothing further, Your Honor.

10 MR. KLAS: I have nothing further, Your Honor.

11 THE COURT: Based upon the defendant's answers to the
12 questions asked of him, I find that he fully understands
13 the offense to which he has entered his plea, that he fully
14 understands the plea agreement and his legal and
15 constitutional rights, that he has freely and voluntarily
16 entered his plea, and that he has admitted the essential
17 elements of Simple Robbery. Therefore, I will accept the
18 plea.

19 I'm going to order a presentence investigation and
20 set sentencing for June 5, 1990 at one-thirty in the
21 afternoon in this courtroom.

22 Someone from the probation department will contact
23 you, Mr. Varner, and you cooperate with them so I can get
24 the information I'm going to need. And we will see you
25 back here on the 5th of June. Okay?

Theodore Stevie Varner - File No. 4675713

1 MR. KLAS: No, Your Honor.

2 MR. GREGG: No, Your Honor.

3 THE COURT: Does the State have anything further, Mr.
4 Gregg?

5 MR. GREGG: No, Your Honor.

6 THE COURT: Mr. Klas, anything?

7 MR. KLAS: No, Your Honor.

8 THE COURT: Mr. Varner, anything you would like to say?

9 THE DEFENDANT: Well, I'm ready go home now.

10 THE COURT: I'm sure.

11 THE DEFENDANT: I am tired of being bad.

12 THE COURT: For good?

13 THE DEFENDANT: For good, man. I'm through.

14 THE COURT: You know how to do it, right?

15 THE DEFENDANT: I know I want to get a job, man.

16 THE COURT: Okay. All right. I know you can do it.

17 You just have to do it.

18 THE DEFENDANT: Yeah.

19 THE COURT: Okay.

20 S E N T E N C E

21 You, Theodore Stevie Varner, having entered a plea
22 of guilty in open court on April 25, 1990 to the crime of
23 Simple Robbery as charged in a complaint filed in this
24 court on November 13, 19989 in File No. 4675713; now,
25 therefore,

Theodore Stevie Varner - File No. 4675713

1 In addition, I'm going to require that you serve
2 108 days in the Ramsey County Correctional Facility. I'm
3 going to give you credit for the 108 days you have already
4 served, so there is no further time for you to serve as
5 long as you comply with the conditions of your probation.

6 And as soon as we're finished here and they take
7 you back down and get your regular clothes and sign you out
8 you're free to go on this matter.

9 I assume there is nothing else holding you.

10 MR. GREGG: What is the period of probation, Your
11 Honor?

12 THE COURT: Ten years.

13 I'm also going to require that Mr. Varner pay
14 \$200.00 restitution through the probation department
15 according to a schedule set by them.

16 And that he have no contact with Bradley Froelich
17 or his family members, either in person or through letters,
18 telephone, through anybody else, or in any other way.

19 That he pay an assessment of \$25.00 to the Clerk
20 of District Court on or before August 1, 1990.

21 The record should reflect also apparently the
22 original complaint or a complaint charging Aggravated
23 Robbery is to be dismissed.

24 Is that correct, Mr. Gregg?

25 MR. GREGG: Yes, Your Honor.

Theodore Stevie Varner - File No. 4675713

1 MR. KLAS: There may be some technical -- the simple
2 robbery was amended to aggravated and then they didn't
3 charge the agg. so --

4 THE COURT: Everything but what I just sentenced him on
5 is dismissed.

6 THE DEFENDANT: So I'm on probation for ten years?

7 THE COURT: We will start you out at ten years. You
8 may, if you behave yourself, we'll let you off a little
9 early.

10 Okay. Good luck.

11 THE DEFENDANT: All right. Thank you, Your Honor.

12 MR. KLAS: Thank you, Your Honor.

13 THE DEFENDANT: You have a nice evening.

14 THE COURT: All right.

15
16
17 Dated: June 5, 1990
18
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23
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25

EXHIBIT 'B'

Record of Felony Convictions

- (1) June, 1989
Minnesota, Ramsey County
Simple Robbery
- (2) September, 1994
Minnesota, Ramsey County
Third Degree Sale of Controlled Substance
- (3) September, 2002
Minnesota, Ramsey County
Third Degree Sale of Controlled Substance

*The above convictions can be substantiated and proven by the Government/Respondent's own records.

EXHIBIT "C"

Excerpt from instant case Pre-Sentence Investigation Report (PSR)

The following photocopy of page 6 of Petitioner's PSR report clearly indicates in paragraph 27 the plain error and incorrect listing of Petitioner's SIMPLE ROBBERY conviction as aggravated robbery.

Said error resulted in an incorrect designation as an armed career criminal under the ACCA, thereby wrongly and substantially increasing Petitioner's sentence of incarceration to his extreme detriment.

Re: Theodore Stevie Varner

27. 11/14/1989 Aggravated Robbery (felony), Ramsey County District Court, St. Paul, MN (4675713) 04/25/1990: Pled guilty §4A1.2(e)(3)
 06/05/1990: Sentenced to 27 months confinement stayed, to serve 108 days jail, 10 years probation
 10/19/1990: Probation violation hearing
 01/08/1991: Probation violation hearing, to serve 8 days jail
 05/02/1991: Probation violation hearing, to serve 15 days jail
 10/17/1991: Probation violation hearing, 27 months imposed
 01/09/1994: Discharged from custody

The defendant was represented by Daniel Klas. The defendant was initially charged with two felony counts of Simple Robbery and Aggravated Robbery. The charge was amended to Aggravated Robbery. According to the criminal complaint, on June 20, 1989, the defendant, along with another individual who possessed a firearm, robbed two individuals in St. Paul, Minnesota, for a total of \$203.

The Minnesota statute of conviction was 609.245. Pursuant to §4B1.4, it appears this offense is a predicate offense for purposes of Armed Career Criminal.

28. 02/22/1991 No Proof of Insurance (misd), Hennepin County District Court, Minneapolis, MN (CR9138559) 06/25/1991: Pled guilty, sentenced §4A1.2(c)(2)
 to 90 days stayed for 1 year, \$100 fine stayed, and community service (hours unknown)

Due to the nature of the offense, additional records were not requested.

29. 08/14/1993 False Information to Police (misd), Ramsey County District Court, St. Paul, MN (K4932099) 08/17/1993: Pled guilty, sentenced §4A1.2(e)(3)
 to serve 30 days jail

EXHIBIT "D"

(1) Partial list of 8th Circuit remanded, reversed or vacated cases

U.S. v. McFee, 842 F.3d 572, 2016
U.S. v. Headbird, 832 F.3d 844, 2016
U.S. v. Willoughby, 653 F.3d 738, 2011
U.S. v. Thornton, 766 F.3d 875, 2014
U.S. v. Walker, 555 F.3d 716, 2008
U.S. v. Brown, 795 F.3d 924, 2015
U.S. v. Shockley, 816 F.3d 1058, 2015
U.S. v. Walker, 840 F.3d 477, 2016
U.S. v. Gordon, 557 F.3d 623, 2008
U.S. v. Goodwin, 669 Fed Appx 317, 2016
U.S. v. Bankhead, 746 F.3d 323, 2013
U.S. v. Furgueron, 605 F.3d 612, 2010
U.S. v. Tucker, 740 F.3d 1177, 2013

(2) Example list of remanded, reversed or vacated cases for other circuits

U.S. v. Dahl, 833 F.3d 345 (3rd Cir 2016)
U.S. v. White, 836 F.3d 437 (4th Cir. 2016)
U.S. v. O'Connor, No.16-3300 (10th Cir. Oct.30, 2017)
*and literally hundreds of others...

(3) Other

This list also shall incorporate all cases referenced and cited herein the foregoing Habeas Motion, and includes by inference hundreds of such cases from all other circuits.

EXHIBIT "E" - SENTENCING GUIDELINES

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
Zone A	1	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	4-10	6-12	9-15
	6	0-6	1-7	6-12	9-15	12-18
	7	0-6	2-8	8-14	12-18	15-21
	8	0-6	4-10	10-16	15-21	18-24
Zone B	9	4-10	6-12	8-14	12-18	18-24
	10	6-12	8-14	10-16	15-21	21-27
	11	8-14	10-16	12-18	18-24	24-30
Zone C	12	10-16	12-18	15-21	21-27	27-33
	13	12-18	15-21	18-24	24-30	30-37
Zone D	14	15-21	18-24	21-27	27-33	33-41
	15	18-24	21-27	24-30	30-37	37-46
	16	21-27	24-30	27-33	33-41	41-51
	17	24-30	27-33	30-37	37-46	46-57
	18	27-33	30-37	33-41	41-51	51-63
	19	30-37	33-41	37-46	46-57	57-71
	20	33-41	37-46	41-51	51-63	63-78
	21	37-46	41-51	46-57	57-71	70-87
	22	41-51	46-57	51-63	63-78	77-96
	23	46-57	51-63	57-71	70-87	84-105
	24	51-63	57-71	63-78	77-96	92-115
	25	57-71	63-78	70-87	84-105	100-125
	26	63-78	70-87	78-97	92-115	110-137
	27	70-87	78-97	87-108	100-125	120-150
	28	78-97	87-108	97-121	110-137	130-162
	29	87-108	97-121	108-135	121-151	140-175
	30	97-121	108-135	121-151	135-168	151-188
	31	108-135	121-151	135-168	151-188	168-210
	32	121-151	135-168	151-188	168-210	188-235
	33	135-168	151-188	168-210	188-235	210-262
	34	151-188	168-210	188-235	210-262	235-293
	35	168-210	188-235	210-262	235-293	262-327
	36	188-235	210-262	235-293	262-327	292-365
	37	210-262	235-293	262-327	292-365	324-405
	38	235-293	262-327	292-365	324-405	360-life
	39	262-327	292-365	324-405	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life